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Committee

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

In re:

18-03197-FPC11

GIGA WATT, INC.

Debtor.

UNSECURED CREDITORS
COMMITTEE'S DISCLOSURE
STATEMENT

I. Preliminary Statement

This Disclosure Statement describes a forthcoming plan of reorganization (the "Plan") and the mechanism for its implementation. This Disclosure Statement should be read in conjunction with the Plan, which is the document which will ultimately be confirmed and bind parties in interest.

All parties in interest should also read the Plan and this Disclosure Statement in their entirety, rather than relying on any summary thereof. The Unsecured Creditors Committee ("Committee") urges all parties in interest to consult with independent counsel in connection with their decision ultimately to accept or reject the Plan. Notwithstanding the foregoing, without waiving the right to support any other competing strategy for providing repayment to creditors, representative members of the Committee unanimously propose the following treatment of claims. While the present Disclosure Statement does not presently have the

1 support of the Chapter 11 Trustee, the Committee shared a prior version of the
2 same with the Trustee 30 days ago and hopes to work together to craft a joint plan.

3 **II. Summary of Plan and Code Provisions for Voting**

4 A full year has passed since the commencement of this Chapter 11
5 reorganization case. The Committee now proposes its own exit strategy given that
6 (1) the mining equipment relied on by Giga Watt to generate cryptocurrency is
7 aging, (2) administrative costs continue to accrue and professional fees alone
8 exceed \$800,000, and (3) the main Giga Watt generating facility is located in a
9 county where electricity rates are scheduled to increase substantially starting in
10 April 2020.

11 In light of this, the Committee proposes that a third-party loan
12 (“Reorganization Loan”) be solicited in the amount of the net funds that operations
13 at TNT and Moses Lake would have generated over the reasonable life span of the
14 existing mining equipment or a percentage of appraised value of the business not to
15 exceed a to-be-specified percentage.

16 Once obtained, to the extent that there are not sufficient funds to satisfy all
17 allowed claims in full, proceeds of the Reorganization Loan will be attributed 60%
18 to administrative claims as a final and complete payment, and then 40% to all
19 unsecured creditors. The portion attributable to unsecured creditors shall be
20 divided evenly between monies available for those opting to be paid cash, and
21 those who wish instead to retain equity in a Giga Watt Newco, with half of 40%, or
22 20% of the Reorganization Loan being provided for working capital for the
23 Newco. Upon distribution of the Loan proceeds, all assets in the bankruptcy estate
24 will be vested in the Giga Watt Newco, including but not limited to the right to
25 pursue any prepetition litigation claims belonging to the Debtor-in-Possession.

26 In the event no satisfactory loan is capable of being secured within 90 days
27 of the filing of this Disclosure Statement, all funds generated from the TNT and
28 Moses Lake operations will be collected in escrow for the sooner of, 12 months or

1 the end of positive financial operations (“Handover Event”) for TNT and Moses
2 Lake, with administrative expenses, cash unsecured creditor, and equity unsecured
3 creditor all being paid in the same proportion as through the Reorganization Loan.

4 For avoidance of doubt, after the Handover Event or disbursement of funds
5 from the Reorganization Loan, administrative creditors and unsecured creditors
6 who opt to receive cash will receive no further consideration from the bankruptcy
7 estate, and the bankruptcy estate will be vested in the Giga Watt Newco.

8 *A. Repayment*

9 There are \$129,001,908 of claims filed in this bankruptcy case. This
10 consists, *inter alia*, of a \$30,000,000 claim by a class action law firm, almost
11 \$30,000,000 of claims from insiders, and \$25,000,000 from a subleasee.

12 There appear to be no secured claims.

13 Among administrative priority claims, there are \$125,000 of unpaid
14 prepetition wage claims.

15 Funds for implementation of the Plan will be derived from a loan the
16 Committee anticipates it will be able to secure from a third-party source – the
17 Reorganization Loan.

18 All unpaid allowed unsecured creditors shall become the holders of equity of
19 a new reorganized Giga Watt entity that will emerge from bankruptcy in a
20 ownership percentage that corresponds to the amount of their allowed proofs of
21 claim. Within 30 days of payment of the Reorganization Loan proceeds, the new
22 owners of the reorganized Debtor may, but are under no obligation to, hold a
23 shareholders meeting, elect a board of directors, and determine the proper
24 management for the new Giga Watt entity.

25 *B. Voting Procedures and Confirmation Requirements*

26 1. Ballots and Voting Deadline.

27 A ballot for voting to accept or reject the Plan will be distributed, along with
28 this Disclosure Statement and the Plan, upon the Bankruptcy Court’s approval of

1 the Disclosure Statement. Creditors and equity interest holders of the Debtor must
2 (1) carefully review the ballot and instructions thereon and execute it; and (2)
3 return the completed ballot to the Committee c/o Salish Sea Legal PLLC, 2212
4 Queen Anne Ave N., No. 719, Seattle, WA 98109, no later than midnight,
5 February 20, 2020. Ballots received after the deadline will not be counted.

6 2. Creditors Entitled to Vote.

7 Any impaired creditor or equity interest holder of the Debtor¹ under the Plan
8 is entitled to vote, provided that (1) its claim has been scheduled by the Debtor and
9 such claim is not scheduled as disputed, contingent or unliquidated, or (2) it has
10 filed a proof of claim on or before the last date set by the Court for such filing, and
11 no objection to such proof of claim is pending at the time of the confirmation
12 hearing.

13 Any claim or equity interest as to which an objection has been filed (and
14 such objection is still pending) is not entitled to vote, unless the Court temporarily
15 allows the claim or equity interest in an amount which it deems proper for the
16 purpose of accepting or rejecting the Plan upon motion by the creditor or holder of
17 an equity interest whose claim or equity interest is subject to objection.

18 A Creditor will be bound by the terms and treatment set forth in the Plan if
19 the Plan is accepted by the requisite majorities in each class of creditors and/or is
20 confirmed by the Court. Creditors who fail to vote will not be counted in
21 determining acceptance or rejection of the Plan. Allowance of a claim for voting
22 purposes does not necessarily mean that the claim will be allowed or disallowed
23 for purposes of distribution under the terms of the Plan. Any claim to which an
24 _____

25 ¹ Under § 1124 of the Bankruptcy Code, a class of claims or equity interests is
26 impaired under a Plan unless, with respect to each claim or equity interest of such
27 class, the plan (1) leaves unaltered the legal, equitable, and contractual rights of the
28 holder of such claim or equity interest, or (2) reinstates the claim or equity interest
pursuant to its original terms and cures any default.

1 objection has been or will be made will be allowed only for distribution after
2 determination by the Court after the Plan is confirmed.3. Requirements for
3 Confirmation.

4 In order to be confirmed (i.e., approved) by the Bankruptcy Court, the Plan
5 must conform with the following:

6 a. Propose to pay each member of a class of claimants, who has not accepted
7 the Plan, property at least equal in value to what the claimant would receive
8 if the Debtor's assets were liquidated on the date of the confirmation
9 hearing, and distributed to creditors according to their rights and priorities
10 under law;

11 b. Propose to pay all Administrative Claims in full and all Priority Claims in
12 full in deferred payments or cash;

13 c. Disclose all compensation paid or promised for professional services
14 rendered or to be rendered in connection with the case;

15 d. Disclose the identity and affiliations of all officers to serve after the Plan
16 is confirmed and the compensation of any insiders to be employed after
17 Confirmation; and

18 e. At least one impaired class must vote in favor of the Plan.

19 The Bankruptcy Code defines acceptance of a Plan by a class of creditors or
20 equity holders as acceptance by holders of two-thirds in dollar amount and a
21 majority in number of the allowed claims of that class which actually cast ballots
22 to accept or reject the Plan.

23 3. Confirmation Hearing.

24 The Bankruptcy Code requires that the Bankruptcy Court hold a
25 Confirmation Hearing with notice to all parties in interest. The Confirmation
26 Hearing is scheduled for February __, 2020 at _____, before
27 the Honorable Judge Frederick Corbit. The Confirmation Hearing may be
28 adjourned or continued by the Bankruptcy Court without further notice except for

1 an announcement made of the adjourned or continued date made at the
2 Confirmation Hearing.

3 At the Confirmation Hearing, the Bankruptcy Court shall determine whether
4 the requirements of the Bankruptcy Code have been satisfied, in which event the
5 Bankruptcy Court shall enter an order confirming the Plan.

6 With respect to creditor acceptance of the Plan, if the requisite members of
7 an impaired Class do not vote to accept the Plan as provided above, the Debtor
8 may seek confirmation pursuant to § 1129(b) of the Bankruptcy Code, known as
9 the “cramdown” procedure. Pursuant to this section, the Bankruptcy Court may
10 confirm the Plan notwithstanding the non-acceptance by an impaired Class if at
11 least one impaired Class votes to accept the Plan, the Plan does not discriminate
12 unfairly, and is “fair and equitable” to the non-accepting Class(es).

13 A Plan does not discriminate unfairly within the meaning of the Bankruptcy
14 Code if no Class receives more than it is legally entitled to receive for its claims or
15 equity interests. The Bankruptcy Code establishes different “fair and equitable”
16 standards for secured and unsecured claims.

17 With respect to an Unsecured Claim, a Plan may be “fair and equitable” if
18 (1) each impaired unsecured creditor receives or retains property of a value equal
19 to the amount of its allowed claim, or (2) the holder of any claim or interest that is
20 junior to the claims of the dissenting class will not receive any property under the
21 plan, except to the extent that such complies with the absolute priority rule and its
22 exceptions.

23 Finally, it must be noted that even though a Creditor may vote to reject the
24 Plan, so long as the Plan is confirmed, the Creditor will be entitled to share in any
25 distributions to be made under the Plan.

26 **III. REQUISITE DISCLOSURES**

27 *A. Representations Limited*

28 NO FORMAL APPRAISALS HAVE BEEN UNDERTAKEN OF THE

1 DEBTOR'S PROPERTY. THE VALUES PLACED THEREON AND
2 SUMMARIZED BELOW ARE THE COMMITTEE'S BEST ESTIMATE OF
3 THE VALUE OF THE PROPERTY AS OF THE TIME OF THE FILING OF
4 THE PLAN AND THIS DISCLOSURE STATEMENT. THESE VALUES MAY
5 DIFFER FROM VALUES PLACED ON THE SAME PROPERTY AT THE
6 TIME OF FILING OF THE PETITION FOR RELIEF AND THE SUBSEQUENT
7 SCHEDULES.

8 *B. Background, Income and Expenses*

9 On November 19, 2018 (the "Petition Date"), the Debtor filed a voluntary
10 petition in this Court for reorganization relief under Chapter 11 of title 11 of the
11 U.S. Code (as amended, the "Bankruptcy Code"). In January 2019, a Chapter 11
12 Trustee was appointed to administer this estate.

13 Giga Watt, Inc. currently operates two crypto currency mining operations in
14 Eastern Washington, one in Grant County (Moses Lake) and the other in Douglas
15 County (TNT). The Debtor-in-Possession previously had operations in Douglas
16 County at the so-called Pangborn facility. The Trustee asserts that the lease to the
17 Pangborn facility expired as of June 2019.

18 The TNT facility restarted operation on September 10, 2019. The projected
19 monthly revenues for the Douglas County operations is approximately \$36,000.

20 **IV. Classification and Treatment of Claims**

21 The Plan establishes three classes of claims, including two subcategories of
22 administrative/priority claims. The classes of claims are identified and treated as
23 follows:

24 A. Administrative Expenses. Unless the proceeds of the Reorganization
25 Loan exceed the total amount of claims, 60% of Administrative Expense claims
26 approved and allowed by the Court shall be paid in full, in cash, by the Debtor on
27 the Effective Date of the Plan or as soon thereafter as the amount thereof can be
28 fixed, unless a different treatment is agreed to or provided for in this Plan.

Administrative claims which by their terms, are not due and payable on or before the Effective Date shall be paid as and when due.

Class A consists of Priority Claims under 11 U.S.C. § 507 other than Administrative Claims and Priority Tax Claims. The claims here consist of prior wage claims by former employees of Giga Watt, which total in approximate amount \$125,000.

This Class also includes at least \$800,000 in administrative priority legal and professional expenses, consisting of claims by the Trustee, Trustee's counsel, former Debtor-in-Possession counsel, original Committee counsel, successor Committee counsel, and Committee special counsel.

B. Class B Unsecured Creditor. There are more than \$125,000,000 of currently allowed unsecured claims.

C. Class C Equity. Giga Watt was owned by the ownership group identified in the original bankruptcy petition.

V. Implementation of Plan

If a Reorganization Loan is obtained, proceeds will then be paid to satisfy all administrative claims 60% and then 40% shall be paid *pro rata* to all unsecured creditors. Half of the sums available to unsecured creditors shall be paid to the Newco to be used for working capital to start up and maintain the business. The other half will be paid in cash to those allowed unsecured creditors waiving any equity interest in the business. Upon payment of the Loan proceeds, all assets in the bankruptcy estate will be vested in the Giga Watt Newco, including but not limited to the right to pursue any prepetition litigation claims belonging to the Debtor-in-Possession.

In the event no acceptable loan is capable of being secured within 90 days of the filing of this Disclosure Statement, the same transfer of funds and assets occurs over time, which will be the shorter time period of 12 months or the commenced obsolescence of mining equipment at the facilities.

1
2 **VI. Analysis of Liquidation Value of the Estate**

3 The value of the stream of payments until mining equipment is anticipated to
4 be obsolete is \$ _____. The anticipated residual value of the operations once such
5 mining equipment is obsolete is \$ _____.

6 The liquidation value of the estate is approximately \$ _____. The Plan
7 proposes to pay \$ _____ toward unsecured claims which is greater than the
8 liquidation value of estate.

9 **VII. Tax Consequences**

10 The Committee is not qualified to advise creditors of the specific tax
11 ramifications to them of confirmation of the Plan, and therefore makes no
12 representations in this regard. However, the Committee is not aware of any
13 potential material federal tax consequences to creditors that would result from
14 confirmation of the Plan. Each creditor is urged to consult with a tax advisor as to
15 such matters.

16 No material tax consequence to the Debtor is anticipated as a result of
17 confirmation of the Plan. Any forgiveness of indebtedness would be exempt from
18 taxation under IRC § 108. The Debtor's basis in the secured property will have to
19 be adjusted, but no tax will be due as a result thereof until any such property is
20 sold.

21 **VIII. Modifications or Withdrawals of the Plan**

22 The Committee may alter, amend, or modify the Plan under § 1127(a) of the
23 Bankruptcy Code at any time before the Confirmation Date, so long as the Plan, as
24 modified, meets the requirements of §§ 1122 and 1123. The Committee may also
25 alter, amend, or modify the Plan under § 1127(b), following the Confirmation Date
26 but before the Effective Date. The Committee may revoke or withdraw the Plan
27 before the Confirmation Date. If the Plan is revoked or withdrawn before the
28 Confirmation Date, the Plan shall be of no force or effect, and shall be deemed null

1 and void. If the Plan is revoked or withdrawn before the Confirmation Date,
2 nothing contained herein shall in any way effect or prejudice the rights of the
3 Debtor with regard to Claims, Avoidance Actions, or any other rights or interests.
4 After confirmation, the plan may be modified pursuant to § 1127(e).

5 **IX. Objections to Claims, Counterclaims, and Avoidance Actions**

6 Any objections to claims must be filed no later than 30 days before the
7 Effective Date/Confirmation. The Committee believes that the claims resolution
8 process should not delay Confirmation of the Plan. In order to expedite payments
9 to creditors, the Committee seeks Confirmation notwithstanding the fact that
10 certain claims may be disputed.

11 **X. Miscellaneous Plan Provisions**

12 A. Executory Contracts and Unexpired Leases.

13 The leases for the Moses Lake and TNT facilities are expressly assumed.

14 Any prepetition Executory Contracts and Leases in effect as of the Effective
15 Date (other than any leases to tenants) and not specifically rejected will be deemed
16 rejected as of the Effective Date. Any Claims arising from the rejection of
17 Contracts and Leases must be filed on or before the Rejection Claim Bar Date. The
18 Rejection Claim Bar Date is 30 days after the Effective Date, or, if later, 30 days
19 after entry of any Final Order rejecting the Executory Contract or Lease. Absent
20 the filing of a proof of claim on or before the Rejection Claim Bar Date, all
21 Rejection Claims shall be forever barred from assertion and shall not be
22 enforceable against the Debtor, its Estate, Assets, or properties. All Rejection
23 Claims shall be General Unsecured Claims.

24 B. Retention of Jurisdiction, Closing.

25 Pursuant to §§ 105(a) and 1142 of the Bankruptcy Code, the Plan provides
26 for the Bankruptcy Court to retain exclusive jurisdiction over all matters relating to
27 the Plan, including the allowance of Claims and the adjudication of any Avoidance
28 Actions. Upon substantial consummation of the plan, the case shall be closed, but

1 shall be subject to reopening to enforce the terms of this Plan and to enter a
2 discharge. This provision serves to avoid the need to pay U.S. Trustee fees after
3 substantial consummation, an expense Debtor can ill afford.

4 **XI. Risks for the Plan**

5 The estimate of the hypothetical stream of payments from operations prior to
6 obsolescence may be incorrect in duration and/or amounts.

7 Committee may be unable to secure financing within 90 days.

8 **XII. Conclusion**

9 The information and materials provided in this Disclosure Statement are
10 intended to assist you in voting on the Plan in an informed fashion. Since
11 confirmation of the Plan will be binding on your interests, the Committee invites
12 you to review these materials and make such further inquiries as may be
13 appropriate.

14 DATED this 12th day of December, 2019.

15 **SALISH SEA LEGAL PLLC**

16
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